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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Policies and Rules Pertaining )  
to the Equal Access Obligations )  
of Cellular Licensees )

RM - 8012

To: The Commission

**REPLY COMMENTS OF FLEET CALL, INC.**

**FLEET CALL, INC.**

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October 15, 1992

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REPLY COMMENTS OF FLEET CALL, INC.

Fleet Call, Inc. ("Fleet Call") respectfully submits its Reply Comments on MCI's Petition for Rulemaking (the "MCI Petition") in the above-captioned proceeding.<sup>1/</sup> MCI asks the Federal Communications Commission (the "Commission") to impose uniform interexchange equal access requirements on all cellular carriers. For the reasons set forth below, Fleet Call submits that such uniform requirements would not serve the public interest.

I. INTRODUCTION

Fleet Call is one of the nation's leaders in developing advanced, highly-efficient, wide-area digital mobile communications systems. It conceptualized and is constructing Enhanced Specialized Mobile Radio ("ESMR") systems in six of the largest metropolitan areas in the country.<sup>2/</sup> These systems incorporate

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<sup>1/</sup> Public Notice, DA 92-745, released June 10, 1992.

<sup>2/</sup> On February 13, 1991, the Commission authorized Fleet Call to construct and operate 800 MHz ESMR systems in Chicago, Dallas, Houston, Los Angeles, New York and San Francisco. See In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991) (the "Fleet Call Waiver Order"),

state-of-the-art technology, including digital speech coding, Time Division Multiple Access ("TDMA") transmission and frequency reuse to yield in excess of 15 times the customer capacity of existing Specialized Mobile Radio ("SMR") systems while providing improved transmission quality and enhanced services. Fleet Call's first ESMR system will be operational in Los Angeles in the summer of 1993.

Some commentors in this proceeding propose that any rulemaking to apply uniform equal access requirements to cellular carriers should be expanded to apply uniform equal access obligations to all wireless communications providers, including SMRs and future Personal Communications Services ("PCS") licensees.<sup>3/</sup> As one of the leading SMR licensees in the country, and the initiator of advanced, digital ESMR systems, Fleet Call has a substantial interest in the outcome of this proceeding, as set forth below. Fleet Call's reply comments address only the issue of whether a rulemaking should be initiated to impose uniform, nationwide equal access obligations on SMRs or other private land mobile communications licensees.

## II. BACKGROUND

Under current law, cellular licensee affiliates of the Bell Operating Companies ("BOCs") are required to offer their customers

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recon. den. 6 FCC Rcd 6989 (1991).

<sup>3/</sup> See e.g., Comments of the Public Utilities Commission of Ohio; Comments of Ameritech, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group and U S West, Inc. ("RBOC Comments"); Comments of Bell Atlantic.

equal access to interexchange carriers ("IXCs").<sup>4/</sup> Independent cellular carriers are not required to do so. MCI states that while customers of BOC cellular carriers can presubscribe to the interexchange carrier of their choice, customers of non-BOC cellular providers must accept service from an interexchange carrier chosen by the cellular carrier who, in most cases, charges the customer premium "full market rates" for reselling this long distance service.<sup>5/</sup> MCI contends that imposing uniform nationwide equal access policies and procedures on all cellular carriers would benefit non-BOC cellular subscribers by allowing them to purchase cellular and long distance service separately and presumably obtain the best price/performance combination.<sup>6/</sup>

The comments in this proceeding evidence sharp disagreement concerning not only whether to impose uniform equal access obligations on cellular carriers, but whether the public would be better off if equal interexchange carrier access obligations were eliminated for all wireless communications providers. For example, the Regional Bell Operating Companies ("RBOCs"), citing their pending request to the Department of Justice to eliminate the equal access obligations of BOC affiliate cellular carriers,<sup>7/</sup> argue that cellular licensees are legally, functionally and competitively

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<sup>4/</sup> United States v. Western Electric Co., 797 F.2d 1082 (D.C. Cir. 1986).

<sup>5/</sup> MCI Petition at pp. 4-5.

<sup>6/</sup> Ibid.

<sup>7/</sup> Memorandum and Order, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Feb. 16, 1989).

different than wireline local exchange carriers for whom equal access is justified.<sup>8/</sup> They assert that the existing BOC affiliate cellular equal access requirements competitively disadvantage these cellular licensees and impose unnecessary costs on their subscribers.<sup>9/</sup>

Accordingly, the RBOCs support initiating a rulemaking considering a uniform equal access policy for all wireless exchange communications licensees, including SMRs, future PCS and other radio communications providers. Contrary to MCI, however, they advocate creating a uniform policy and a "level playing field" by repealing current cellular equal access obligations rather than adopting uniform equal access obligations.<sup>10/</sup>

Not surprisingly, the interexchange carrier commentators support MCI's Petition.<sup>11/</sup> Most independent cellular carriers oppose the Petition while supporting continued equal access obligations for BOC affiliate cellular licensees. For example, Comcast Cellular Communications, Inc. ("Comcast") states that equal access has historically been imposed to isolate the local exchange

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<sup>8/</sup> See, generally, RBOC Comments.

<sup>9/</sup> Id. at p. 11-13. The RBOC commentators state that they willing accept requirements that grant all cellular carriers equal access to the local exchange, but that equal access requirements at the level of the radio exchange are unnecessary for any industry participants. Equal access to the local exchange is also mandatory for SMRs and other wireless communications providers.

<sup>10/</sup> Id. at p. 13.

<sup>11/</sup> See e.g., Comments of AT&T.

carrier's ("LECs") monopoly over bottleneck exchange facilities.<sup>12/</sup> While equal access provisions are necessary and appropriate for the LECs and their cellular affiliates due to their control of the bottleneck local exchange marketplace, independent cellular operators have no such control over bottleneck facilities. Therefore, Comcast concludes, there is no reason to treat BOC and independent cellular licensees uniformly since they are not similarly situated.

### III. DISCUSSION

#### A. Fleet Call Has No Bottleneck Facilities or History of Anticompetitive Activities Warranting Equal Access Obligations

The purpose of the current equal access obligations is to break the LECs monopoly abuse of access to the local exchange and provide all IXCs with equal access to BOC end offices. The equal access provisions establish basic ground rules for BOC treatment of IXCs, cellular carriers and others for whom interconnection with local exchange facilities is essential.

Fleet Call believes that there is no reason to require uniform treatment of BOC cellular and all other wireless mobile communications providers, including SMRs, for equal access purposes. The Commission designed the SMR service to enable SMR licensees to design spectrally efficient, customized service offerings to meet the particularized communications needs of

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<sup>12/</sup> Comcast Comments at pp. 8-11.

private land mobile communications customers.<sup>13/</sup> The SMR service is itself intensely competitive.<sup>14/</sup> Moreover, SMRs must compete with other mobile communications providers, including cellular systems, to provide the advanced wide area, regional and national mobile communications services customers want in the 1990s and beyond.

Fleet Call and other SMRs have neither the market dominance, financial resources or anticompetitive history of the LECs or their cellular counterparts. Moreover, they have no control over access to bottleneck exchange facilities that can be abused to stymie competition and for which equal access is one remedy. The rationale for imposing equal access obligation is that an entity enjoys monopoly control of an access bottleneck. Fleet Call and other SMRs have no such control.<sup>15/</sup>

SMRs have and will continue to respond to marketplace demand for the best possible service offerings. If private land mobile customers desire equal access, competition and marketplace incentives will cause SMRs to provide it. The commentors have made

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<sup>13/</sup> See e.g., Fleet Call Waiver Order at para. 2; Second Report and Order, PR Docket No. 79-191, 90 FCC 2d 1281, 1283 (1982).

<sup>14/</sup> See e.g., Request for Permanent Waiver of Southwestern Bell Corporation, PR Docket No. 86-3, filed September 18, 1992, at Appendix A. Southwestern Bell's research indicates SMRs face significant competition in many markets. For example, there are nearly 100 SMRs competing in the Los Angeles Designated Filing Area ("DFA"), 60 in the Philadelphia DFA and 36 competing SMRs in the New York DFA.

<sup>15/</sup> See Comments of McCaw Cellular Communications, Inc. at pp. 3-4; Comments of Comcast at pp. 8-9.

no showing that SMR customers today are disadvantaged by the absence of SMR equal access obligations or would benefit from their application to SMR licensees.

In addition, Fleet Call is only now constructing its ESMR systems. Equal access obligations comparable to those in place for the BOC cellular affiliates would impose undue and unnecessary costs and administrative burdens on a start-up operation--particularly in light of the fact that there is no evidence that Fleet Call's customers will desire this capability.<sup>16/</sup> As a new entrant into the mobile communications marketplace, Fleet Call's ESMR systems will have none of the characteristics that gave rise to current equal access obligations and would be handicapped by these requirements. Accordingly, applying uniform equal access requirements to SMRs would not be in the public interest.<sup>17/</sup>

B. Fleet Call's Customers Would Not Benefit From Equal Access

Fleet Call contemplates that the IXCs will compete with each other in offering bulk rate discounts and service enhancements to carry the expected high volume of long distance traffic both terminating and originating on the ESMR systems. This will directly benefit Fleet Call's customers since, as a private

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<sup>16/</sup> A number of cellular commentators note that their customers are indifferent to the choice of an IXC for their long distance service. See e.g., Comcast Comments at p. 4.

<sup>17/</sup> Similarly, it is premature and inconsistent with the public interest to consider at this time whether equal access should be required of prospective PCS providers, particularly given the fact that the Commission has yet to precisely define the parameters of the proposed personal communications service.



carrier, Fleet Call is statutorily prohibited from reselling this service for a profit.<sup>18/</sup> Accordingly, Fleet Call will pass on such discounts directly to its customers resulting in lower rates (and better service) than individual customers are likely to obtain through presubscription to an IXC. In short, equal access would result in higher long distance costs for Fleet Call's ESMR customers.

The Commission has sought to promote competition among SMR providers and among alternative providers of mobile communications services. It authorized Fleet Call to construct and operate ESMR systems to offer consumers advanced, digital mobile communications services capable of meeting particularized needs for dispatch, interconnect and data communications. Uniform nationwide equal access provisions for all wireless carriers would undercut and are irreconcilable with these Commission objectives and contrary to the public interest.

#### IV. CONCLUSION

Fleet Call has reviewed the comments filed in this proceeding and concludes that no public benefit can be derived from applying uniform equal access policies and procedures to all providers of mobile communications services. Fleet Call's existing customers are not clamoring for equal access and it is unlikely that its ESMR customers will do so.

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<sup>18/</sup> Section 332(c) of the Communications Act of 1934, as amended, prohibits private land mobile carriers from reselling for profit the telephone services or facilities of a common carrier.

Moreover, IXC competition for aggregate ESMR traffic will result in lower rates, better services and maximum benefits for ESMR customers without the costs and administrative burdens inherent in providing equal access. Fleet Call and other SMRs already have incentives in a competitive mobile communications marketplace to provide the best possible combinations of services to their customers. Under these circumstances, SMR customers will not benefit from requiring SMRs to offer equal access to the IXCs.

Accordingly, the Commission should not initiate a rulemaking proposing to impose uniform, nationwide equal access requirements on SMRs or other private land mobile radio licensees.

Respectfully submitted,

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Dated: October 15, 1992

CERTIFICATE OF SERVICE

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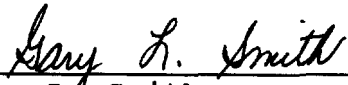
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